


ORDERED.

Dated: September 04, 2018



Jerry A. Funk
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

CLIMATE CONTROL
MECHANICAL SERVICES, INC.,
BASE 3, LLC,
THE ALEXANDER GROUP, LLC, and
FACILITY PERFORMANCE, LLC.

Chapter 11

Case No. 3:15-bk-2248-JAF
Case No. 3:15-bk-2249-JAF
Case No. 3:15-bk-2250-JAF
Case No. 3:15-bk-5021-JAF

Debtor,

(Jointly Administered Under
Case No. 3:15-bk-2248-JAF)

SKANSKA USA BUILDING, INC.,

Plaintiff,

Adv. Pro. No. 3:16-ap-0100-JAF

v.

CLIMATE CONTROL MECHANICAL SERVICES, INC.,

Defendant.

**ORDER DENYING CLIMATE CONTROL'S MOTION TO DISMISS
FOR FAILURE TO JOIN INDISPENSABLE PARTY**

This proceeding is before the Court on the Motion to Dismiss for Failure to Join an Indispensable Party (Doc. 87) filed by Defendant CLIMATE CONTROL MECHANICAL

SERVICES, INC. (“Climate Control”). Plaintiff SKANSKA USA BUILDING, INC. (“Skanska”) filed a response in opposition. (Doc. 90). For the reasons set forth below, the Court determines that Climate Control’s motion should be denied.

Background

Climate Control filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in May 2015. (Doc. 1 in 3:15-bk-2248). Climate Control is a commercial heating, ventilation, and air conditioning (“HVAC”) subcontractor. In April 2016, Skanska filed the instant adversary proceeding. (Doc. 1). Skanska later filed an amended complaint, alleging a single breach-of-contract count relating to a subcontract between Skanska and Climate Control. (Doc. 36). Skanska alleges Climate Control defaulted under the terms of the subcontract due to Climate Control’s insolvency and various performance defaults. Skanska requests economic damages resulting from these contractual breaches.

In the present motion, Climate Control argues this proceeding should be dismissed due to Skanska’s failure to join Skanska’s first-party insurer, Steadfast Insurance Company (a subsidiary of Zurich American Insurance Company) (“Steadfast/Zurich”). Skanska purchased a subcontractor default insurance policy from Steadfast/Zurich, commonly referred to as a Subguard policy. Subcontractor default insurance is first-party insurance that insures the prime contractor against the payment or performance default of a subcontractor and operates as an alternative or supplement to payment and performance bonds. Climate Control alleges that Skanska has been paid by Steadfast for Climate Control’s alleged defaults and that Steadfast/Zurich is, therefore, an indispensable party to this action. Climate Control does not cite any law in its motion.

Analysis

Rule 19 of the Federal Rules of Civil Procedure governs the required joinder of parties to an action. Fed. R. Civ. P. 19. “Rule 19(a) lays out the standards for determining whether a party is ‘required’ by virtue of its interest in or importance to the action, and Rule 19(b) provides factors for a court to consider in determining whether, ‘in equity and good conscience,’ the action may proceed when a required party cannot be joined.” Florida Wildlife Fed’n Inc. v. U.S. Army Corps of Engineers, 859 F.3d 1306, 1316 (11th Cir. 2017); Focus on the Family v. Pinellas Suncoast Transit Auth., 344 F.3d 1263, 1279-80 (11th Cir. 2003). “[T]he relevant inquiry, in the first step, ‘is whether complete relief can be afforded in the present procedural posture, or whether the nonparty’s absence will impede either the nonparty’s protection of an interest at stake or subject parties to a risk of inconsistent obligations.’” Ahmed v. Kifle, 728 F. App’x 934, 936 (11th Cir. 2018) (quoting City of Marietta v. CSX Transp., Inc., 196 F.3d 1300, 1305 (11th Cir. 1999)).

Here, complete relief can be afforded to Skanska or Climate Control in the absence of Steadfast/Zurich, Climate Control’s interests can be adequately protected in the present procedural posture, and there is no risk of any inconsistent obligations resulting from Steadfast/Zurich’s absence. Climate Control argues that Steadfast/Zurich acquired the rights to Skanska’s claims against Climate Control. However, this fact does not make Steadfast/Zurich an indispensable party. See, e.g., AGSC Marine Ins. Co. v. Spectrum Underground, Inc., 2012 WL 2087441, at *1 (M.D. Fla. June 8, 2012) (“Spectrum’s argument overlooks federal law, which makes it clear that, although the insurer and insured are both real parties in interest, they both are not indispensable parties within the meaning of Rule 19.”). Climate Control’s motion presents no analysis demonstrating that Steadfast/Zurich is an indispensable party.

Accordingly, it is hereby ORDERED that Climate Control’s motion is DENIED.